



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/171338

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 08, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on February 18, 2016, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner's appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Polk County Department of Social Services  
100 Polk County Plaza, Suite 50  
Balsam Lake, WI 54810

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) was a resident of Polk County until she died.
2. The county agency notified the petitioner on September 10, 2013, that it was ending her medical assistance benefits as of October 1, 2013, because her assets exceeded the program's limit.

3. The petitioner's daughter appealed this denial on January 8, 2016.

### **DISCUSSION**

The petitioner is deceased. Before she died, she was in a nursing home and received medical assistance. The county agency notified her on September 10, 2013, that it was ending her benefits as of October 1, 2013, because her assets exceeded the program's \$2,000. Her daughter testified that she was under stress and didn't make the nursing home payments, which put allowed the petitioner's assets to accumulate. The petitioner's daughter seeks to have her mother eligible retroactively from October through December 2013.

The petitioner's daughter testified movingly about the stress she was under that prevented her from paying the bill and filing this appeal earlier. But medical assistance appeals must be filed within 45 days of the date of the negative action. Wis. Admin. Code, § HA 3.05(3). When an appeal is late the Division of Hearings and Appeals loses its authority to consider it. The petitioner's appeal was filed more than two years after the negative action. Therefore, I cannot consider it.

### **CONCLUSIONS OF LAW**

The petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 17th day of March, 2016

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 17, 2016.

Polk County Department of Social Services  
Division of Health Care Access and Accountability